Remarks

The application presently contains claims 1-5, 8-11 and 38-40. By this amendment, claim 1 has been amended. Claims 41-45 have been added. Support for the new and amended claims can be found throughout the specification, for example at page 12, lines 7-10, page, 41, line 13 through page 48, line 22. No new matter enters by way of this amendment. Upon entry of the foregoing amendment, claims 1-5, 8-11, and 38-45 will be pending.

I. Response to Restriction Requirement

In the Office Action dated March 7, 2005, the Examiner required restriction to one of the inventions under 35 U.S.C. § 121 of the following Groups:

Group I.	Claims 1-5, 8-11, and 38-39 drawn to a substantially purified nucleic acid, classified in class 536, subclass 24.1.
Group II.	Claim 40, drawn to a transgenic plant, classified in class 435, subclass 410.

Applicants respectfully traverse the restriction requirement, and provisionally elect the claims of Group I, Claims 1-5, 8-11, and 38-39 for further prosecution.

Applicants submit that the complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. Initially, Applicants note that the claim of Group II, claim 40, depends from claim 1 (of Group I), which has previously been indicated as allowable by the Examiner. *See,* Notice of Allowance mailed June 17, 2004. As MPEP 803 directs, "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the

merits, even though it includes claims to independent or distinct inventions." Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

No serious burden is created for the Examiner by simultaneously examining all of the claims together in a single application. The relationship in the subject matter between Group I and Group II is amenable to simultaneous examination of the subject matter of the two groups. Indeed, the Office acknowledges that "the Groups are related in that each is directed to a product comprising a nucleic acid of SEQ ID NO: 1." Office Action at page 2. As such, there is a close relationship between the subject matter of these sets of claims. It is respectfully believed that there would be no serious burden on the Examiner to examine all of the claims together at this time.

Applicants further note that new claims 41-44 should also be examined together with claims 1-5, 8-11, and 38-40. Such claims are also related to the pending claims in that they also comprise a nucleic acid of SEQ ID NO: 1. Again, it is respectfully believed that there would be no serious burden on the Examiner to enter the new claims and examine all of claims 1-5, 8-11, and 38-44 together.

Furthermore, the TC 1600 Restriction Training Materials further support such a grouping of claims. *See, e.g.*, TC Restriction Training Materials, 1630/1640/1650 Example 1, pages 24-37 (August 2004). The Office's Training Materials acknowledge that polynucleotides, vectors and host cells can be grouped together for examination without a serious burden on the Examiner. *See, e.g., Id.* at page 27.

As such, Applicants submit that restriction in this case is improper and therefore request withdrawal of the requirement for restriction between Groups I and II.

Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (202) 942-5085.

Respectfully submitted,

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